Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-470

JUNE TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windham Circuit
	}	
Jorge Delaoz	}	DOCKET NO. 854-7-07 Wmcr
		Trial Judge: Karen R. Carroll

In the above-entitled cause, the Clerk will enter:

Defendant appeals pro se from a district court order granting the State's motion to compel him to submit to the taking of a DNA sample. Defendant contends: (1) the state's attorney lacked statutory authority to file the motion; and (2) the court erred in failing to address defendant's claims concerning the procedures used to collect DNA samples. We agree with the first contention, and therefore reverse and remand.

In October 2008, defendant was convicted of several charges, including felony possession of cocaine, and was sentenced to a period of incarceration. An appeal of the conviction is currently pending before this Court. Sup. Ct. No. 2009-001. In April 2009, the State, represented by a Windham County deputy state's attorney, filed a motion to compel DNA testing of defendant, pursuant to 20 V.S.A. § 1935. At a hearing on the motion in November 2009, defendant—representing himself—argued, inter alia, that the motion was invalid because it was not filed by the commissioner of either the Department of Public Safety or the Department of Corrections. Defendant implicitly relied on 20 V.S.A. § 1935(a), which provides that "[i]f a person who is required to provide a DNA sample under this subchapter refuses to provide the sample, the commissioner of the department of corrections or public safety shall file a motion in the district court for an order requiring the person to provide the sample."

The trial court granted the motion, finding no basis to conclude that the "the statute limits the Court's ability to go forward in this case just because the actual motion to compel was filed by the . . . State's Attorney," and further finding no prejudice to defendant in any event. The court also noted that the State had submitted an affidavit in support of the motion by a DOC "correctional services specialist" outlining the facts underlying the motion to compel. The trial further concluded that the State had established that defendant was a person convicted of a statutorily designated crime under 20 V.S.A. § 1933 and therefore subject to DNA testing. See 20 V.S.A. § 1932(12)(1) (defining a "designated crime" subject to DNA testing to include any felony offense). Accordingly, it granted the motion to compel. This appeal followed.

Defendant's principal claim on appeal is that the deputy state's attorney for Windham County lacked statutory authority to file the motion to compel. The plain language of the statute provides that, when the State seeks to compel DNA testing "the commissioner of the department

of corrections or public safety shall file a motion in the district court." Id. § 1935(a). Absent a showing of ambiguity, the plain language of a statute must control. State v. O'Dell, 2007 VT 34, ¶ 7, 181 Vt. 475 (where "the plain language is clear and unambiguous" we will enforce a statute "according to its terms").

The record shows that the motion to compel DNA testing in this case was not filed by the commissioner of corrections or public safety, or by any attorney purporting to represent these parties. Accordingly, we are compelled to agree with defendant that the motion did not comport with the clear and unambiguous statutory requirement, and thus conclude that the motion and the order based thereon were invalid. The State's arguments to the contrary are unpersuasive. It asserts that a state's attorney's authority to prosecute criminal matters is generally co-extensive with that of the Attorney General, who is authorized to represent the State in "all . . . criminal matters as at common law and as allowed by statute." 3 V.S.A. § 152; see State's Attorney v. Attorney General, 138 Vt. 10, 13 (1979) (noting that the two offices generally "share equal authority" in criminal matters). While derivative of an underlying criminal conviction, however, DNA sampling is not a criminal prosecution, and proceedings related thereto are not within the state's attorneys' ambit absent statutory authorization. Although the deputy state's attorney who filed the motion in this case also represents on appeal that he has been "duly appointed as a Special Assistant Attorney General to represent the state on behalf of the Commissioner of Public Safety and Corrections" in DNA matters, this argument was not raised below, and nothing in the trial record supports the claim. Accordingly, we conclude that the trial court's order must be reversed, and the matter remanded to the trial court for further proceedings consistent with the statute.

Defendant also contends the trial court erred in failing to address issues concerning the procedures and personnel used to collect DNA samples. On appeal, as below, however, defendant fails to identify with any specificity the procedures to which he objects or the basis of the objection. Defendants states merely that he "refutes the procedures" used by the Department of Corrections to collect samples and "contests the qualifications of DOC personnel" who administer the program. This is insufficient briefing for purposes of review. See V.R.A.P. 28(a)(4) (appellant's brief must state the contentions of the appellant and the reasons therefore with adequate citations to the authorities, statutes, and parts of the record relied on); Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (we will not consider claims so inadequately briefed as to fail to meet the standards of V.R.A.P. 28(a). Accordingly, we find no basis to disturb the judgment on this basis.

Reversed and remanded for further proceedings consistent with views expressed herein.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice